



The Persons We Make: Corporate
Personhood, State Personhood, and
the Metaphysics of Group Agency

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The debate over corporate legal personhood has been crippled by three persistent errors. First, it rests on an unexamined asymmetry between state personhood, which is universally accepted, and corporate personhood, which is widely contested, even though both arise from the same intellectual tradition and involve the same kind of attribution. Second, the debate treats the fiction theory and the real entity theory as mutually exclusive, when in fact they answer different questions about different kinds of entities. Third, it assumes that the natural person is a unified, self-evident subject, when natural personhood is itself composite, internally conflicted, and sustained by mechanisms that closely parallel those of corporate decision-making. This article advances a distinction between the “sociological corporation” (a genuine human group with collective agency) and the “legal corporation” (a juridical construct that may correspond to no social reality), and, drawing on the work of Christian List, Philip Pettit, and Peter French, explains that group agency is genuine, emergent, and irreducible to the agency of individual members. The distinction dissolves the century-old standoff between the fiction and real entity theories by showing that each accurately describes a different kind of corporation. It also supplies what constitutional doctrine on corporate rights conspicuously lacks: a principled basis for distinguishing among entities with different claims to legal personhood.

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I. THE PUZZLE OF SELECTIVE ANXIETY

Nobody marches against the personhood of the state. In all the years since *Citizens United v. FEC*¹ provoked a popular movement to amend the U.S. Constitution, complete with bumper stickers and a slogan as clean and confident as any in American political history (*Corporations Are Not People*), no comparable movement has formed around the proposition that *States Are Not People*. The asymmetry is so complete that it is almost invisible; one has to state it explicitly before it registers as strange.²

States are routinely treated as legal persons. States own property on a scale no corporation can approach. They enter contracts, incur debts, assume treaty obligations, and enforce claims through courts that are themselves organs of their personality. States survive changes of government, changes of territory, and changes of constitutional regime with a continuity that would be unintelligible without the attribution of a persistent legal identity.³ Corporations, meanwhile, provoke intense and sometimes visceral resistance when they claim the same kind of standing. The objection seems self-evident to those who make it: of course corporations are not people; they have no bodies, no consciousness, no capacity for suffering. But the state has no body either. The United States does not bleed. When we say that “the government decided” to raise a tariff, we are attributing agency to an abstraction in precisely the way that talk of “corporate decisions” attributes agency to an abstraction.

If the objection to corporate personhood is metaphysical—that corporations lack the properties of genuine persons, then it applies with equal force to the state. If the objection is political—that corporations should not wield the power that personhood confers, then it requires an argument about legitimacy and accountability, not an argument about what counts as a person. The participants in the contemporary debate argue about ontology when they should argue about power, and the confusion has made the conversation far less productive than it otherwise would have been.

The legal personality of the state, at least in the English tradition, has a remarkable pedigree. Its most vivid expression is the doctrine of the king’s two bodies, excavated by Ernst Kantorowicz in 1957.⁴ Medieval English jurists held that the king possessed a body natural, which was mortal

¹ 558 U.S. 310 (2010) (Kennedy, J.).

² The closest analog is the anarchist tradition, which denies the legitimacy of the state altogether. But even anarchists do not frame their objection as a complaint about legal personhood. They object to the state’s authority, not its ontological status.

³ The attribution of agency to states is so pervasive in ordinary language that it passes unnoticed. Newspapers report that “France” decided, “China” threatened, “Russia” invaded. No one pauses to observe that a legal abstraction cannot literally decide, threaten, or invade.

⁴ ERNST H. KANTOROWICZ, *THE KING’S TWO BODIES: A STUDY IN MEDIEVAL POLITICAL THEOLOGY* (Princeton Univ. Press 1957).

and subject to infirmity and error, and a body politic, which was invisible, intangible, immortal, incapable of wrong, and never underage.⁵ The body politic was not a poetic conceit but a legal proposition with operational consequences: when the king acted in his official capacity, it was the body politic that acted, and when the king died, the body politic migrated instantly to his successor. Kantorowicz demonstrated that this doctrine was a transposition of Christological theology into political form, modeled on the Council of Chalcedon's definition of Christ as one person in two natures.⁶ The application was worked out over centuries by jurists trained in canon law who understood the theological provenance of what they were building.

The doctrine operates through the Crown's status as a corporation sole: the law treats the office of the monarch, and the successive individuals who occupy it, as a single continuous legal person.⁷ When Queen Elizabeth II died in 2022, Charles III succeeded to the Crown without interruption, probate, or conveyance. The structural logic here recurs in almost identical form in the law of business corporations. The doctrine of the king's two bodies rests on a distinction between the office and the officeholder, between the institutional role and the human being who fills it. The law maintains this distinction even when it becomes strained. This is precisely the logic of the corporate veil. In *Salomon v. Salomon & Co.* in 1897, the House of Lords confronted a one-man company in which the sole beneficial owner, director, and dominant creditor were all the same natural person, and Lord Halsbury held that the company was nonetheless a distinct legal entity.⁸ In each case, the law sustains a distinction between two aspects of what is, in social reality, a single phenomenon; and in each case, the legal system must also possess a mechanism for collapsing the distinction when the circumstances demand it. Medieval jurists recognized that the king's body natural could contaminate his body politic, as when King Henry VI's manifest incapacity forced the appointment of a protector. Modern courts pierce the corporate veil when the separation has become a device for fraud.⁹ The two doctrines are cognate responses to the same structural problem.

⁵ The doctrine was articulated in 1571 in Plowden's Reports. The relevant passage, from the Case of the Duchy of Lancaster, reads: "For the King has in him two Bodies, viz., a Body natural, and a Body politic." EDMUND PLOWDEN, *LES COMMENTARIES, OU LES REPORTS DE EDMUND PLOWDEN* 213 (London, 1571).

⁶ Kantorowicz traces the connection in detail. The medieval jurists drew on the Christological formula of the Council of Chalcedon (451 A.D.), which defined Christ as one person in two natures, divine and human, "without confusion, without change, without division, without separation." KANTOROWICZ, *THE KING'S TWO BODIES: A STUDY IN MEDIEVAL POLITICAL THEOLOGY*, *supra* note 4, at 42–86.

⁷ F.W. Maitland, *The Crown as Corporation*, in *STATE, TRUST AND CORPORATION* 32–51 (David Runciman & Magnus Ryan eds., Cambridge Univ. Press 2003).

⁸ *Salomon v. Salomon & Co.* [1897] A.C. 22, 31 (H.L.). Lord Halsbury L.C.: "Either the limited company was a legal entity or it was not. If it was, the business belonged to it and not to Mr. Salomon."

⁹ The literature on veil-piercing is immense. For a useful survey, see Robert B. Thompson, *Piercing the Corporate Veil: An Empirical Study*, 76 CORNELL L. REV. 1036 (1991). The doctrine has been called unprincipled, incoherent, and result-driven, yet it persists everywhere, because every legal system that

Thomas Hobbes described the commonwealth in *Leviathan* as “an Artificiall Man”¹⁰ and defined a person as anyone whose words or actions represent those of another, “whether Truly or by Fiction.”¹¹ The sovereign is a person by fiction, constituted by the mutual authorization of subjects who covenant to transfer their right of self-government to a single man or assembly.¹² The sovereign’s person did not exist before the covenant and will not survive the dissolution of the commonwealth. It is a made thing in the most literal sense. Yet nobody who reads Hobbes concludes that, because the commonwealth is “merely” an artificial person, it does not deserve respect.

Medieval canon law produced both the *persona ficta* of the corporation and the corporation sole of the Crown.¹³ The same conceptual workshop built the legal personality of the Church, the religious house, the municipality, and the kingdom. Their subsequent divergence was driven by political contingency. As the nation-state consolidated power, it claimed a monopoly on the creation of legal persons. The concession theory served this claim: if corporations existed only by sovereign grant, the sovereign controlled the terms of their existence. The state’s own personhood was quietly removed from the category of things requiring justification.

Otto von Gierke’s massive *Das Deutsche Genossenschaftsrecht* was, among other things, an attack on this monopoly.¹⁴ F.W. Maitland grasped the political implications at once: if only the state can confer personality, then churches, trade unions, and civic associations exist at the state’s pleasure.¹⁵ Part V returns to the pluralist tradition that grew from this insight.

Why, then, the asymmetry? The most straightforward explanation is familiarity: the state’s personhood is so old and so deeply embedded in language that it has ceased to be perceptible as an attribution, whereas general incorporation statutes became widespread only in the mid-19th century.¹⁶ Then there is democratic legitimacy: the state is “us,” ostensibly accountable through democratic processes, while the corporation is “them,” pursuing private purposes. Finally, and most important in the American context, there is the specific provocation of extending not merely technical legal

attributes personality to corporations must also possess a mechanism for looking through the attribution when the circumstances demand it.

¹⁰ THOMAS HOBBS, *LEVIATHAN* 9 (Richard Tuck ed., Cambridge Univ. Press rev. student ed. 1996).

¹¹ *Id.* at 111–16.

¹² *Id.* at 117–20.

¹³ On Pope Innocent IV and the *persona ficta*, see John Dewey, *The Historic Background of Corporate Legal Personality*, 35 *YALE L.J.* 655, 664–65 (1926).

¹⁴ OTTO VON GIERKE, *POLITICAL THEORIES OF THE MIDDLE AGE* (Frederic William Maitland trans., Cambridge Univ. Press 1900) (translated from portions of 3 OTTO VON GIERKE, *DAS DEUTSCHE GENOSSENSCHAFTSRECHT*).

¹⁵ Frederic William Maitland, *Introduction*, in GIERKE, *POLITICAL THEORIES OF THE MIDDLE AGE*, *supra* note 14, at vii, vii–xlv.

¹⁶ See John Morley, *The Common Law Corporation: The Power of the Trust in Anglo-American Business History*, 116 *COLUM. L. REV.* 2145, 2163 & n.113 (2016).

personality but constitutional rights to corporations. Nobody objects to Walmart owning a warehouse. The outrage is directed at Walmart claiming a right to free speech.

The American trajectory is, from a comparative perspective, extraordinary. The Fourteenth Amendment's application to corporations, dating from a headnote of doubtful authority in 1886,¹⁷ produced what Elizabeth Pollman has called a "patchwork of rights":¹⁸ Fourth Amendment protection against regulatory searches but no Fifth Amendment privilege against self-incrimination; free speech but no vote; religious liberty (if closely held) but no right to marry. The progression from *First National Bank v. Bellotti*¹⁹ through *Citizens United*²⁰ to *Burwell v. Hobby Lobby Stores, Inc.*²¹ has expanded the scope considerably over the ensuing decades, without ever producing a coherent theoretical foundation for the selection. Justice William Orville Douglas protested as early as 1949 that there was no adequate historical, logical, or reasonable basis for treating corporations as constitutional persons,²² and Chief Justice John Roberts could still make a joke of it in 2011.²³ The debate proceeds as though everyone knows what corporate personhood means, when in fact nobody does.

Beneath these proximate explanations lies a deeper confusion. The popular critique conflates two operations that are conceptually distinct: the technical attribution of legal personality, which is a device for designating a unit to which rights and duties attach, and the substantive attribution of moral and political standing, which states that the entity has interests deserving of respect.²⁴ The state's legal personality is uncontroversial because people collapse these two operations, assuming that the state deserves moral standing and therefore finding its technical personality natural. The corporation's legal personality is contested because people separate them, granting the technical attribution while resisting the substantive one. The result is a pervasive sense of illegitimacy: the corporation appears to have

¹⁷ *Santa Clara Cnty. v. S. Pac. R.R. Co.*, 118 U.S. 394, 396 (1886) (recording statement of Waite, C.J., before argument). The headnote, not part of the opinion, asserted that the Fourteenth Amendment's Equal Protection Clause applied to corporations.

¹⁸ Elizabeth Pollman, *Reconceiving Corporate Personhood*, 2011 UTAH L. REV. 1629, 1631, 1655–58.

¹⁹ 435 U.S. 765 (1978) (Powell, J.).

²⁰ *Citizens United v. FEC*, 558 U.S. 310 (2010) (Kennedy, J.).

²¹ 573 U.S. 682 (2014) (Alito, J.).

²² *Wheeling Steel Corp. v. Glander*, 337 U.S. 562, 576–79 (1949) (Douglas, J., dissenting).

²³ *FCC v. AT&T Inc.*, 562 U.S. 397 (2011) (Roberts, C.J.). Chief Justice Roberts, writing for a unanimous Court, quipped: "We trust that AT&T will not take it personally." *Id.* at 410.

²⁴ The point was seen a generation ago in JOSEPH VINING, *LEGAL IDENTITY: THE COMING OF AGE OF PUBLIC LAW* (Yale Univ. Press 1978), which traced how the expansion of standing in public law dissolved the bounded legal person inherited from private law and disclosed an identity that was representative rather than personal. Vining read this as the coming of age of public law. *Id.* at 179–81. The present argument reads it as confirmation that legal personality was never a report of a natural fact about bounded individuals but a construction answerable to institutional need. If the public-law plaintiff is already a partly artificial identity assembled to make a system work, the corporation is not an anomaly within a world of natural persons but the same artifice more candidly named.

acquired the apparatus of personhood without possessing the moral credentials that the apparatus was meant to express. To say this is to concede that the asymmetry is not, in the end, so strange. As politics, it is intelligible: anxiety tracks power that cannot be voted out. What is confused is its ontological dress, the conviction that the objection concerns what the corporation *is* rather than what it *does*.

There is a more formidable defense of the asymmetry than any canvassed so far. Hans Kelsen argued that the state is not one juristic person among others but the “personification of the legal order” itself.²⁵ On this view the comparison that drives this article is malformed from the start: the corporation is a person within a legal system, while the state is the system, regarded as a unity and given a name. Its personality is not an attribution the law makes but a shorthand for the law’s own existence. The argument is elegant, and it is the strongest case for treating state personhood as *sui generis*. It proves too much, because the state that owns property and answers in its own courts is plainly an actor within the order as well as the order’s name; the Kelsenian state cannot be sued, and the actual state is sued constantly. It also proves too little, because even granting the identification, it explains only why the state’s personality is structurally peculiar, not why it is morally innocent. The anxiety directed at corporate personhood is anxiety about made persons wielding power. The state is the most powerful made person of all, and renaming it the legal order does not unmake it.

One further complication deserves mention, because the history of state personhood contains its own cautionary tale. There is a counter-tradition, running from Friedrich Hegel through certain currents of 19th and 20th century thought, in which state personhood is not a useful device but a deep metaphysical truth, the state being the embodiment of ethical life in which human freedom achieves its concrete realization.²⁶ The English pluralists saw where this led. John Neville Figgis watched the French state suppress religious congregations under the Associations Law of 1901²⁷ and concluded that any theory making group life dependent on sovereign permission was a recipe for tyranny. The totalitarian regimes of the 1930s and 1940s confirmed the diagnosis with devastating completeness: they claimed the very monopoly of personality that the concession theory had made thinkable and supplied no resource for resisting, and they systematically suppressed or subordinated

²⁵ HANS KELSEN, *GENERAL THEORY OF LAW AND STATE* 181–82 (Anders Wedberg trans., Harvard Univ. Press 1945) (analyzing the identity of state and legal order). For Kelsen the state is simply the legal order personified, not a separate entity standing behind it.

²⁶ See G.W.F. HEGEL, *ELEMENTS OF THE PHILOSOPHY OF RIGHT* §§ 257–58 (Allen W. Wood ed., H.B. Nisbet trans., Cambridge Univ. Press, 1991).

²⁷ Loi du 1er juillet 1901 relative au contrat d’association [Law of July 1, 1901, on the Contract of Association], *Journal Officiel de la République Française* [J.O.] [Official Gazette of France], July 2, 1901, p. 4025 (Fr.); see also JOHN NEVILLE FIGGIS, *CHURCHES IN THE MODERN STATE* 85–118 (Longmans, Green & Co. 1913).

the intermediary bodies that Gierke, Maitland, and Figgis had defended.²⁸ The proposition that the state alone creates legal persons and may revoke their personality at will is a claim of sovereign supremacy over all forms of collective life, and it has been used as such.

II. THE SOCIOLOGICAL CORPORATION AND THE LEGAL CORPORATION

The debate over corporate personality has been conducted, for more than a century, as though the word “corporation” referred to a single kind of thing. The fiction theorists, following Friedrich Carl von Savigny,²⁹ argued that all corporations are artificial creatures of the law, possessing no will and no reality independent of sovereign concession. The real entity theorists, following Gierke, argued that all corporations are genuine social organisms with a collective life that the law merely recognizes. The nexus-of-contracts school, following Michael Jensen and William Meckling,³⁰ argued that all corporations are bundles of voluntary contractual arrangements, with no “there” there at all. Each theory claimed to account for the entire field, but none of them could.

The reason is that the word “corporation” does not refer to a single thing. It refers to at least two fundamentally different types of entity, and the failure to distinguish them has corrupted every major theory of the firm. The distinction I want to draw is between what I will call the *sociological corporation* and the *legal corporation*, and it is, I believe, the analytical key that the debate has been missing.

The sociological corporation is a genuine human group with an ongoing social life. It has members who interact over time, who develop shared understandings and institutional norms, who argue and deliberate and reach collective decisions through recognized procedures. It has a collective identity that persists through changes in membership and that cannot be reduced to any snapshot of its current roster. It has institutional memory: it knows things that no single member knows, because its knowledge is distributed across its organizational structure and embedded in its routines, records, and informal practices. It has, in a sense that Part III will make precise, a collective will that is not reducible to the wills of its individual members. General Motors is a sociological corporation. So is the Catholic Church, the University of Oxford, a medieval guild, a modern trade union, and a large law firm. These entities are accurately described by the real entity theory. They exist before

²⁸ See ROBERT A. NISBET, *THE QUEST FOR COMMUNITY* 98, 201 (Oxford Univ. Press 1953) (describing the rise of the centralized state and the erosion of intermediate associations as culminating in totalitarianism).

²⁹ 2 FRIEDRICH CARL VON SAVIGNY, *SYSTEM DES HEUTIGEN RÖMISCHEN RECHTS* (Veit 1840).

³⁰ Michael C. Jensen & William H. Meckling, *Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure*, 3 J. FIN. ECON. 305, 310 (1976).

their legal recognition and would continue to exist, in some form, if that recognition were withdrawn.

The legal corporation, by contrast, is a juridical construct that may or may not correspond to any sociological reality. It is a creature of the filing office, brought into existence by compliance with statutory formalities and sustained by the periodic payment of registration fees. A single-purpose vehicle created to hold a pool of mortgage-backed securities is a legal corporation: it has no employees, no office, no deliberative process, no institutional memory, and no collective life of any description. A shell company in the Cayman Islands registered by a law firm on behalf of an unnamed client is a legal corporation. A holding company that exists solely to own shares in operating subsidiaries, and whose every decision is in fact the decision of a natural person acting in another capacity, is a legal corporation. These entities are pure legal fictions in the most literal and unobjectionable sense of that term. They are creations of law, brought into existence by legal acts, sustained by legal recognition, and dissolved by legal process. The fiction theory describes them accurately.

Between these poles lies a continuum of intermediate cases: the closely held family business with three employees, the sole-proprietor incorporation, the dormant company, the joint venture with a limited duration. Some of these have a genuine if modest social life. Others are scarcely distinguishable from the shell company. No bright line divides them. But the poles are distinct, and the failure to distinguish them explains the interminable character of the theoretical debate.

Consider what happens when each major theory confronts the wrong kind of entity. The fiction theory, as Savigny elaborated it, holds that only human beings are natural persons; all other legal personality is an artificial creation of law.³¹ This is correct about the Cayman Islands shell company and preposterous about General Motors. General Motors is a social organism of extraordinary complexity, employing more than 150,000 people across multiple continents,³² possessing a culture and institutional identity that have persisted through decades of management turnover, and making decisions through deliberative processes that cannot be reduced to the will of any individual or indeed to any set of bilateral contracts. To call this entity a mere fiction is to misdescribe the social world.

The real entity theory, conversely, is correct about General Motors and wrong about the shell company. A Cayman Islands shell company with no employees and no operations has no collective will, no institutional memory, no culture, and no social existence of any kind. To call it a real social entity is

³¹ VON SAVIGNY, *SYSTEM DES HEUTIGEN RÖMISCHEN RECHTS*, *supra* note 29, at 236; *see also* VISA A.J. KURKI, *A THEORY OF LEGAL PERSONHOOD* 44–45 (Oxford Univ. Press 2019).

³² *See* Gen. Motors Co., Annual Report for the Fiscal Year Ended December 31, 2025 (SEC Form 10-K), at 7 (Jan. 27, 2026).

to commit the opposite misdescription, inflating a set of documents filed in a government office into something it plainly is not.

The nexus-of-contracts theory³³ fails for both, though in different ways. Jensen's and Meckling's original formulation described the firm as "simply one form of legal fiction which serves as a nexus for contracting relationships."³⁴ The theory was designed to dissolve the firm as an entity, reducing it to the bilateral deals of which it is composed, and it carried an implicit normative agenda: if the corporation is nothing but private contracting, then the state has no more business regulating its internal affairs than regulating the terms of an ordinary commercial exchange. As applied to the sociological corporation, this is sociologically impoverished. It treats General Motors as a web of bilateral deals, which misses the organizational reality that makes a firm something other and something more than a market. Ronald Coase had understood this decades earlier: the firm exists precisely because it is *not* a market; it replaces market transactions with hierarchical coordination, and the boundary between firm and market is itself an economic variable requiring explanation.³⁵ Jensen and Meckling dissolved the boundary that Coase identified. As applied to the shell company, the nexus-of-contracts theory fails because the shell company often has no contracts at all in any meaningful sense. It is a legal container, not a contractual network.

Melvin Eisenberg was right that the corporation has a "dual nature"—partly contractual and partly bureaucratic hierarchy.³⁶ But the point is stronger than Eisenberg stated. The duality is not between two aspects of the same entity, but rather between two different kinds of entity that happen to share a legal label. The interminable debate between contractarians and their critics has been, in large part, a debate in which one side was describing the shell company and the other was describing General Motors, and neither side recognized that they were talking about different things.

The distinction I am drawing has been gestured at by others but never, I think, stated with the force it deserves or exploited for the analytical work it can do. Eugen Ehrlich's contrast between "living law" and state-made law implies that the sociological corporation is the group governed by living law; the legal corporation is the construct of state law.³⁷ Meir Dan-Cohen distinguished between organizations that are genuine "intelligent machines" and the legal construct of the corporation, arguing that the normative case for

³³ FRANK H. EASTERBROOK & DANIEL R. FISCHEL, *THE ECONOMIC STRUCTURE OF CORPORATE LAW* (Harvard Univ. Press 1991).

³⁴ Jensen & Meckling, *Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure*, *supra* note 30, at 305, 311.

³⁵ Ronald H. Coase, *The Nature of the Firm*, 4 *ECONOMICA* 386 (1937).

³⁶ Melvin A. Eisenberg, *The Conception That the Corporation Is a Nexus of Contracts, and the Dual Nature of the Firm*, 24 *J. CORP. L.* 819 (1999).

³⁷ EUGEN EHRLICH, *FUNDAMENTAL PRINCIPLES OF THE SOCIOLOGY OF LAW* (Walter L. Moll trans., Harvard Univ. Press 1936) (1913).

corporate rights depends on organizational reality rather than legal form.³⁸ Günther Teubner, drawing on Niklas Luhmann's systems theory, argued that the corporation as a legal person is justified only when there is an autopoietic social system for it to correspond to.³⁹ Eric Orts built an "institutional" theory that takes both the social reality and the legal construct seriously.⁴⁰ Margaret Blair's and Lynn Stout's team production theory emphasized that the corporation is a vehicle for coordinating the specific investments of multiple stakeholders, which is a description of the sociological corporation.⁴¹ Most recently, Eva Micheler has defended real entity theory on the ground that organizations have an existence and identity distinct from those of their individual participants.⁴²

None of these scholars, however, has drawn the full implications of the distinction for the traditional debate. Dan-Cohen comes closest. His distinction separates the organization from the legal construct so as to ask which of them the case for corporate rights should track.⁴³ His distinction does not dissolve the standoff between the fiction theory and the real entity theory, and it does not connect the question to the personality of the state, where the same conflation of technical attribution and moral standing produces the asymmetry with which this article began. The point is not merely that some corporations are "more real" than others, nor that the theories work better for some cases than for others. It is that the fiction theory and the real entity theory are not rival answers to the same question. They are correct answers to different questions about different kinds of entities, and the appearance of rivalry is an artifact of the false assumption that "corporation" picks out a natural kind.

The functional analysis of corporate personality developed by Henry Hansmann and Reinier Kraakman supports this reading from an unexpected direction.⁴⁴ Their central insight is that the distinctive contribution of organizational law is "affirmative asset partitioning": the creation of a pool of assets shielded from the personal creditors of the organization's participants. This is something that contract alone cannot achieve, because a contractual

³⁸ MEIR DAN-COHEN, *RIGHTS, PERSONS, AND ORGANIZATIONS: A LEGAL THEORY FOR BUREAUCRATIC SOCIETY* (Univ. of California Press 1986). Dan-Cohen's key move is to distinguish between the "intelligent organization" and the "market network." The former has a hierarchical decision-making structure that generates organizational intentions irreducible to individual intentions. The latter is a set of contractual relationships that can be fully decomposed into bilateral exchanges. *Id.* at 25–62.

³⁹ Günther Teubner, *Enterprise Corporatism: New Industrial Policy and the 'Essence' of the Legal Person*, 36 AM. J. COMPAR. L. 130 (1988).

⁴⁰ ERIC W. ORTS, *BUSINESS PERSONS: A LEGAL THEORY OF THE FIRM* (Oxford Univ. Press 2013).

⁴¹ Margaret M. Blair & Lynn A. Stout, *A Team Production Theory of Corporate Law*, 85 VA. L. REV. 247 (1999).

⁴² Eva Micheler, *Corporate Rights and Obligations: The Perspective of Real Entity Theory*, 16 TRANSNAT'L LEGAL THEORY 22 (2025).

⁴³ See *supra* note 38.

⁴⁴ Henry Hansmann & Reinier Kraakman, *The Essential Role of Organizational Law*, 110 YALE L.J. 387 (2000).

arrangement binds only the parties to it, not third-party creditors who had no say in the matter.⁴⁵ The partitioning operates through two mechanisms. Entity-shielding protects the corporation's assets from the personal creditors of its members. Owner-shielding—that is, limited liability—protects the members from the corporation's creditors.

Hansmann and Kraakman further distinguish between weak and strong forms of entity-shielding, and the distinction maps onto the sociological and legal divide in illuminating ways.⁴⁶ Weak entity-shielding, as found in general partnerships, gives entity creditors a priority claim but allows the personal creditors of partners to force a liquidation of the firm. Strong entity-shielding, as found in the business corporation, establishes a full priority rule under which personal creditors of shareholders have no claim on entity assets at all. The functional justification for strong entity-shielding is strongest precisely where the sociological corporation is most robust: where the firm's organizational capital (its accumulated knowledge, its trained workforce, its institutional routines and supplier relationships) represents a going-concern surplus that would be destroyed by forced liquidation. A complex manufacturing firm that can be disrupted by the personal bankruptcy of a single shareholder is a less efficient vehicle for economic production than one that is insulated from such shocks. A Cayman Islands shell company that holds financial assets has no going-concern surplus to protect. A shell company that possesses only liquid financial assets and possesses no organization-specific capital might have little or no going-concern surplus to protect. The functional case for strong entity-shielding is, in effect, a case about the sociological corporation, even though Hansmann and Kraakman do not frame it that way.

The intellectual history of the nexus-of-contracts theory, as William Bratton reconstructed it, reinforces the point from a different angle.⁴⁷ The theory originated in financial economics, where Jensen and Meckling used it as a simplifying modeling assumption: for the purpose of predicting a firm's behavior in capital markets, the firm's internal organizational structure does not matter; what matters is the set of contractual incentives that align the interests of managers with those of shareholders. As a modeling assumption, this is defensible. Capital markets respond to observable outputs (share price,

⁴⁵ *Id.* at 393–98. Hansmann and Kraakman's central insight is that organizational law's distinctive contribution is “affirmative asset partitioning”: the creation of a pool of assets that is shielded from the personal creditors of the organization's participants. Contract alone cannot achieve this result, because contract binds only the parties to it, not third-party creditors.

⁴⁶ *Id.* at 398–403. Hansmann and Kraakman distinguish between “weak” entity-shielding, a liquidation rule giving entity creditors priority over the personal creditors of members, but allowing the latter to force a liquidation, and “strong” entity-shielding, a full priority rule under which personal creditors of members have no claim on entity assets at all. The business corporation provides strong entity-shielding. The general partnership provides only weak entity-shielding.

⁴⁷ William W. Bratton, Jr., *The “Nexus of Contracts” Corporation: A Critical Appraisal*, 74 CORNELL L. REV. 407, 420–35 (1989).

earnings, dividends), not to the internal deliberative processes that produced them. But the theory did not remain a modeling assumption. It migrated, through the work of Frank Easterbrook and Daniel Fischel in particular,⁴⁸ into legal doctrine, where it was treated as a descriptive and normative claim about the nature of the firm as such. The modeling assumption became a metaphysics. A simplification useful for one purpose (predicting stock prices) was mistaken for a truth about the world (the firm has no real existence apart from its contracts). Bratton's history shows that this migration was accomplished not by argument but by rhetorical force: the nexus-of-contracts metaphor was so vivid and so convenient that it displaced more nuanced accounts without ever having to defeat them on their merits.

The team production theory of Blair and Stout represents a partial corrective.⁴⁹ They argued that the corporation is not a nexus of bilateral contracts but a vehicle for coordinating the specific investments of multiple stakeholders, including shareholders, employees, managers, and creditors, whose contributions cannot be easily separated or individually valued. The board of directors functions as a "mediating hierarchy" that balances these competing claims. This is a description of the sociological corporation: an entity with a genuine collective enterprise that requires institutional governance because the contractual alternative is inadequate. The shell company does not have team-specific investments to coordinate. It does not need a mediating hierarchy. Blair's and Stout's theory applies to the sociological corporation and to it alone, which is precisely the pattern: every theory of the firm that takes the organization seriously turns out to be a theory of the sociological corporation, while every theory that dissolves the organization into its contractual components turns out to be a theory of the legal corporation.

Both functions of corporate personality, entity-shielding and owner-shielding, operate regardless of whether the entity is a sociological corporation or a mere legal construct; a shell company partitions assets as effectively as General Motors. But the normative justification differs in ways that the functional analysis, by design, does not capture. Entity-shielding and owner-shielding for a sociological corporation protect a genuine collective enterprise, with its going-concern surplus, its firm-specific human capital, and its accumulated organizational knowledge, from disruption. The same devices applied to a shell company protect nothing but a set of financial arrangements. Whether the corporation deserves rights beyond the functional minimum of contract and property, whether it can bear moral responsibilities, and whether it warrants the kind of constitutional protection that American courts have extended all depend on which kind of entity

⁴⁸ EASTERBROOK & FISCHEL, *THE ECONOMIC STRUCTURE OF CORPORATE LAW*, *supra* note 33.

⁴⁹ Blair & Stout, *A Team Production Theory of Corporate Law*, *supra* note 41, at 276–87.

we are talking about, and the traditional debate's refusal to make this distinction is the principal reason it has gone nowhere.

III. PERSONS ALL THE WAY DOWN

The standard framing of the corporate personhood debate treats the natural person as the paradigm case and the corporation as the problematic derivative. The natural person is taken to be unified, self-transparent, and metaphysically secure: a single consciousness inhabiting a single body, possessing a single will, and bearing an identity that persists through time in virtue of some deep and incontrovertible fact about the continuity of the self. The corporation, by contrast, is derivative, artificial, and suspect. The entire debate proceeds on the assumption that we know what a person is and that the question is whether the corporation can be squeezed into the same category.

This assumption is mistaken. The natural person is not the unified, self-evident subject that the standard framing supposes. It is a composite entity whose unified agency is an achievement, not a given, sustained by internal mechanisms of deliberation, conflict resolution, and narrative self-construction that are more closely analogous to the mechanisms of corporate decision-making than the traditional dichotomy between "natural" and "artificial" persons allows. The strength of the objection to corporate personhood depends entirely on the assumed gap between the natural person, which is real, unified, and self-evidently a person, and the corporate person, which is artificial, composite, and problematically so. If the gap is narrower than supposed, the objection loses much of its force.

The decomposition of the unified self is one of the great recurring themes of Western philosophy and of modern cognitive science. Plato's tripartite soul—reason, spirit, and appetite—was already an acknowledgment that the human person is a coalition rather than a unity, and that rational agency requires the imposition of order on competing internal forces.⁵⁰ David Hume denied the existence of a persisting self altogether, describing it as a "bundle of perceptions" held together by habit and association rather than by any underlying substance.⁵¹ Immanuel Kant rescued the unity of the self only by making it transcendental: a condition of the possibility of experience rather than an empirical fact about the mind's structure.⁵²

⁵⁰ Plato distinguishes among reason (*logos*), spirit (*thumos*), and appetite (*epithymia*). See PLATO, *REPUBLIC* bk. IV, 436a–441c (C. D. C. Reeve trans., Hackett Publishing Co. 2004).

⁵¹ DAVID HUME, *A TREATISE OF HUMAN NATURE* bk. I, pt. IV, § 6, at 252 (L.A. Selby-Bigge ed., P.H. Nidditch rev., Oxford Univ. Press 2^d ed. 1978).

⁵² See IMMANUEL KANT, *CRITIQUE OF PURE REASON* B131–B136 (Paul Guyer & Allen W. Wood trans., Cambridge Univ. Press 1998).

Contemporary neuroscience and cognitive science have reinforced these philosophical intuitions with empirical findings. Classical split-brain experiments were interpreted as evidence that the cerebral hemispheres can support partially independent streams of awareness and action, while related work on the left-hemisphere “interpreter” documented striking *post hoc* confabulation.⁵³ Daniel Kahneman’s work on dual-process cognition describes the mind as a competition between fast, automatic, and largely unconscious processes (System 1) and slow, effortful, and deliberative ones (System 2), with the former dominating most of the time and the latter intervening only when triggered by surprise or difficulty.⁵⁴ Derek Parfit argued that psychological continuity over time is sustained by “overlapping chains of strong connectedness” and that there is no separate “further fact” of personal identity beyond those relations.⁵⁵ Daniel Dennett described the self as a “center of narrative gravity,” an organizing abstraction through which the mind integrates disparate processes and experiences into a coherent autobiographical narrative.⁵⁶

The cumulative force of these arguments is not that the self is an illusion—a claim that refutes itself in the stating—but that the self is an achievement.⁵⁷ The natural person is a kind of internal parliament, deliberating among competing impulses and commitments, procrastinating, arguing

⁵³ See Roger W. Sperry, *Hemisphere Disconnection and Unity in Conscious Awareness*, 23 AM. PSYCH. 723, 723–24 (1968); Michael S. Gazzaniga, *Cerebral Specialization and Interhemispheric Communication: Does the Corpus Callosum Enable the Human Condition?*, 123 BRAIN 1293, 1319–20 (2000). The confabulation phenomenon is particularly striking: when the right hemisphere initiates an action for reasons the left hemisphere cannot access, the left hemisphere invents a plausible explanation rather than reporting ignorance. The “unified self” is, in part, a *post hoc* narrative imposed on parallel processes.

⁵⁴ See DANIEL KAHNEMAN, THINKING, FAST AND SLOW 20–25 (Farrar, Straus & Giroux 2011).

⁵⁵ See DEREK PARFIT, REASONS AND PERSONS 205–11, 239–40, 279–82 (Clarendon Press 1984).

⁵⁶ See Daniel C. Dennett, *The Self as a Center of Narrative Gravity*, in SELF AND CONSCIOUSNESS: MULTIPLE PERSPECTIVES 103, 103–15 (Frank S. Kessel, Pamela M. Cole & Dale L. Johnson eds., Lawrence Erlbaum Associates 1992); DANIEL C. DENNETT, CONSCIOUSNESS EXPLAINED 412–30 (Little, Brown & Co. 1991).

⁵⁷ It might be objected that this proves too much. If the mind is a community of agencies in tension, and if rational choice for a community runs into Kenneth Arrow’s impossibility theorem, then the rational plan of life that liberal accounts of the person presuppose would be mathematically foreclosed. See KENNETH J. ARROW, SOCIAL CHOICE AND INDIVIDUAL VALUES 22–33, 46–60 (John Wiley & Sons 2^d ed. 1963). The cognate result for group agency is the discursive dilemma, taken up below in the discussion of List and Pettit. See Christian List & Philip Pettit, *Aggregating Sets of Judgments: An Impossibility Result*, 18 ECON. & PHIL. 89, 89–110 (2002). The objection has force only if the self is an Arrowian electorate, and it is not. Arrow concerns the aggregation, for a given profile, of individual preference orderings into a social ordering under conditions including non-dictatorship and independence of irrelevant alternatives. It does not address the process by which a single agent revises her own ordering in response to reasons or constructs a coherent ordering over time. Unity here is an achievement. Christine Korsgaard has argued that the agent makes herself one by acting, taking the Platonic image of the soul as a city not as a confession of incurable division but as a description of the task. CHRISTINE M. KORSGAARD, SELF-CONSTITUTION: AGENCY, IDENTITY, AND INTEGRITY 133–58, 179–80 (Oxford Univ. Press 2009). Michael Bratman has shown how plans and policies supply the cross-temporal structure by which a temporally extended agent governs itself without taking a fresh vote at every instant. MICHAEL E. BRATMAN, STRUCTURES OF AGENCY: ESSAYS 31–33 (Oxford Univ. Press 2007). The non-dictatorship condition, fatal to a fair social choice, is the wrong condition to impose on a single life; the planning self is meant to be sovereign over its parts, and that sovereignty is what coherence consists in.

with itself, sometimes failing to reach a coherent decision, sometimes acting against its own prior resolutions, and sometimes discovering what it thinks only in the process of acting.⁵⁸ The unified rational agent of liberal political theory is not a description of the human mind as it actually operates. It is a useful idealization, valuable for the purposes of moral and political theory, but no more a literal portrait of the natural person than the legal fiction of the corporation is a literal portrait of General Motors.

It is against this background that the work of Christian List and Philip Pettit on group agency becomes decisive.⁵⁹ List and Pettit provide a formal account of how a group can form rational judgments that are attributable to no individual member and that diverge from the judgments of every member considered separately.⁶⁰

The dilemma can be illustrated with a concrete example. Suppose a corporate board of three directors must decide whether to enter a new market. The decision depends on two independent judgments: (1) whether the projected return on investment exceeds the company's hurdle rate; and (2) whether the regulatory risk is acceptable. Director A favors entry because she believes the return exceeds the hurdle rate and that the regulatory risk is acceptable. Director B opposes entry because he believes the return exceeds the hurdle rate but that the regulatory risk is unacceptable. Director C also opposes entry because she believes the return falls short of the hurdle rate but that the regulatory risk is acceptable.

Now consider two aggregation procedures. If the board votes directly on the decision to enter the market, two of three directors vote no, and the board rejects entry. If the board votes on each premise separately and then applies the logical connection—that is, enter only if both conditions are met—a majority finds the return adequate (Director A and Director B) and a majority finds the regulatory risk acceptable (Director A and Director C), so the board should approve entry. The two procedures yield opposite results,

⁵⁸ Recovery culture has a name for the internal chorus that argues the case for relapse: the committee, the standing body of voices that convenes to rationalize what the agent has resolved not to do. The image is exact, and it cuts in both directions. It concedes that the self is corporately structured, populated by sub-agencies that caucus and lobby; it insists at the same time that sobriety, like any sustained commitment, depends on the agent's refusal to let the committee's procedural majority count as the person's decision. The corporative self is not a metaphor borrowed from the law of corporations and lent to psychology. The traffic runs the other way. We understand the corporation because each of us is already a going concern held together against internal dissent.

⁵⁹ CHRISTIAN LIST & PHILIP PETTIT, *GROUP AGENCY: THE POSSIBILITY, DESIGN, AND STATUS OF CORPORATE AGENTS* (Oxford Univ. Press 2011).

⁶⁰ Lewis Kornhauser and Lawrence Sager identified the underlying problem in the context of multi-judge panels: aggregating judges' votes issue by issue can produce a collective judgment different from the result obtained by aggregating their votes on the ultimate conclusion. Lewis A. Kornhauser & Lawrence G. Sager, *Unpacking the Court*, 96 YALE L.J. 82, 115 (1986). List and Pettit generalized this problem into the "discursive dilemma" and developed a formal account of the conditions under which individually rational judgments can generate difficulties for collectively rational judgment. List & Pettit, *Aggregating Sets of Judgments: An Impossibility Result*, *supra* note 57, at 92–93, 96–100.

and neither can be dismissed as irrational: one aggregates reasons, the other aggregates conclusions, and both are defensible methods of collective decision-making.

The significance of the discursive dilemma for the theory of corporate personality is profound. It demonstrates that a group can form and act on judgments that are attributable to no individual member and that diverge from any aggregation of the members' conclusions. When the board adopts the premise-based procedure and approves market entry, its decision reflects a set of corporate beliefs—the return is adequate and the risk is acceptable—that no individual director holds in combination. The board's position is emergent at the level of the group: it is a property of the group as such, arising from the interaction between the members' individual judgments and the group's aggregation procedure, and it cannot be identified with the judgment set of any individual member.

List and Pettit theorize that a group qualifies as an agent when it has “representational states,” which are beliefs about the world, “motivational states,” which are goals and values, and a capacity to act on the basis of the former in pursuit of the latter, integrated through some decision procedure that imposes rational coherence on the whole.⁶¹ Sociological corporations satisfy all three conditions. They have beliefs, such as market assessments, strategic analyses, and risk evaluations, that are not the beliefs of any single member but are the products of organizational processes of information-gathering, deliberation, and judgment. They have goals, such as quarterly targets, product launches, and long-term strategic objectives, that emerge from collective deliberation and that no member could pursue alone. And they have a capacity for integrated action, coordinated through hierarchical authority and institutional routines, that no member possesses individually.

Pettit, in his subsequent work, extended the theory to moral responsibility.⁶² A group agent that satisfies the conditions for agency can also satisfy the conditions for moral responsibility: it can recognize reasons and adjust its behavior in light of normative considerations; it can be a proper target of praise, blame, resentment, and gratitude; and holding it responsible can serve a developmental function by inducing better future behavior. It is a philosophical claim about the conditions under which an entity can properly be held to account for its actions, and Pettit argues, persuasively in my view, that sociological corporations meet those conditions. The claim has been resisted, most forcefully by Manuel Velasquez, on the ground that only beings with intentions in the literal psychological sense can be responsible

⁶¹ LIST & PETTIT, GROUP AGENCY: THE POSSIBILITY, DESIGN, AND STATUS OF CORPORATE AGENTS, *supra* note 59, at 20–21, 47–58, 67–72.

⁶² Philip Pettit, *Responsibility Incorporated*, 117 ETHICS 171, 173–78, 192, 200–01 (2007).

for anything.⁶³ The objection assumes that every corporate attitude can be traced to some individual who holds it. Where the premise-based procedure yields a judgment that no member holds, there is no individual to whom the responsibility can be reassigned without remainder, and the choice is between corporate responsibility and a responsibility deficit.

Peter French, working independently in the philosophy of action, reached a parallel conclusion through a different route.⁶⁴ French argued that a corporation possesses what he called a “corporate internal decision structure” (CID structure): the combination of charter, bylaws, committee systems, reporting lines, and established decision procedures through which individual proposals are filtered, debated, amended, and either adopted or rejected. When a board of directors approves a merger after months of analysis, negotiation, and deliberation, the resulting intention to merge is a corporate intention. Individual directors may have voted for the merger for different reasons, or with different degrees of enthusiasm, or with private reservations that did not find expression in the formal vote. The corporate intention is constituted by the outcome of the decision procedure, not by the private mental states of those who participated in it.⁶⁵

An objection must be met before the parallel is pressed further. Group agents are not conscious. List has subsequently argued that group agents lack phenomenal consciousness: a corporation like General Motors has no body, no subjective experience, no consciousness, and no capacity to feel.⁶⁶ Decomposing the natural self does not answer it, because the moral standing of natural persons was never thought to rest on their unity. It rests, on most accounts, on sentience. The honest response is to grant the asymmetry and to notice how little of the law of persons depends on it. Consciousness grounds the dignitary incidents of personhood: the claims against torture and degradation, and the protections owed to beings that can suffer. Nothing in this article claims those incidents for the corporation. What agency without phenomenology supports is the other half of the institution. A group agent can hold property and answer for its conduct, and its expression, when it is genuinely the product of collective deliberation rather than a natural person’s ventriloquism, is the expression of the deliberating body and protectable as

⁶³ Manuel G. Velasquez, *Why Corporations Are Not Morally Responsible for Anything They Do*, 2 BUS. & PRO. ETHICS J., Spring 1983, at 1, 4–9.

⁶⁴ PETER A. FRENCH, COLLECTIVE AND CORPORATE RESPONSIBILITY 41–47 (Columbia Univ. Press 1984).

⁶⁵ One possible objection to French’s account of the CID structure is that it is too formal and institutional, particularly because many corporate decisions are made informally, through hallway conversations and unminuted understandings, rather than through the formal channels that the CID structure describes. That criticism does not undermine the basic point that even informal decision-making takes place within an institutional context that shapes and constrains it, and that the resulting decision is attributed to the organization rather than to the individuals who participated in it.

⁶⁶ Christian List, *What Is It Like to Be a Group Agent?*, 52 NOÛS 295, 295–96 (2018). List’s conclusion is explicit: group agents satisfy the conditions of intentional agency without possessing phenomenal consciousness, and the theory’s claims do not depend on attributing experience to groups.

such. The corporation's claim is to the agential incidents of personhood, not the experiential ones, and the traditional debate has gone wrong by treating personhood as a package that must be accepted or rejected whole.

We are now in a position to state the parallel between natural and corporate persons with some precision. In both cases, agency is composite: multiple inputs, arising from distinct and sometimes competing sources, are processed through a decision structure that produces a unified output attributed to the whole. In the natural person, the inputs are neural signals, emotional impulses, perceptual data, and reflective judgments, processed through the brain's cognitive architecture. In the sociological corporation, the inputs are proposals, reports, analyses, and votes, processed through the corporate internal decision structure. The media differ profoundly: neurons and synapses on one hand, committees and memoranda on the other. But the structure of agency is remarkably similar: multiple inputs, internal conflict, resolution through a decision procedure, unified action attributed to the entity as a whole, and responsibility attached to the entity rather than to its parts.

In both cases, the resulting agency is genuinely emergent. The natural person's decision to accept a job offer is not the decision of any single neuron or neural subsystem; it is the product of a complex integrative process that no component of the brain could have performed alone. The corporation's decision to enter a new market is not the decision of any single director or manager; it is the product of a deliberative process whose resulting judgment need not coincide with the judgment set of any individual participant, as the discursive dilemma demonstrates with formal rigor.

The parallel extends to the problem of identity over time, which is where Parfit's work becomes directly relevant.⁶⁷ On Parfit's account, the natural person replaces nearly every cell in her body over the course of years; she persists as the same person not in virtue of any unchanging material substrate but in virtue of overlapping psychological continuity: memories, character traits, ongoing projects, and the narrative thread that binds successive temporal stages into a single biographical arc. The corporation replaces every employee, every director, and every shareholder over the course of decades. General Motors in 2026 shares not a single human being with General Motors in 1926. Nor, as it happens, does it share a charter: the corporation that bears the name today is, as a matter of law, a different entity from the one that entered bankruptcy in 2009, when the operating business was sold to a newly formed company and the old legal person was left behind to be

⁶⁷ See *supra* note 55.

liquidated under another name.⁶⁸ Yet no one doubts that General Motors survived. The factories, the workforce, the dealer network, and the accumulated engineering knowledge passed through the legal discontinuity intact, and the market, the public, and the company itself treated the new entity as the continuation of the old. The sociological corporation persisted while the legal corporation was dissolved and replaced. It persists as the same entity in virtue of organizational continuity: the same institutional culture (however evolved), the same accumulated knowledge and reputation, and the narrative thread of corporate history that binds successive organizational stages into a single institutional arc.⁶⁹ If Parfit is right that the former kind of continuity is all there is to personal identity, then the latter kind is no less adequate. The corporation's persistence through time is not a legal fiction superimposed on a revolving door of individuals. It is a real pattern of organizational continuity, analogous in structure to the pattern of psychological continuity that constitutes personal identity in the natural person.

Corporate law provides a set of natural experiments that test this parallel with some rigor. Mergers, spin-offs, and bankruptcies are, from the standpoint of identity theory, the corporate equivalents of the thought experiments that Parfit used to probe the nature of personal identity: teletransportation, brain bisection, and gradual psychological replacement. They force the question of how much organizational continuity is "enough" to sustain the identity of the entity, and they reveal that the answer is surprisingly similar across the natural and corporate domains.

Consider the merger. When two corporations merge, the surviving entity assumes the legal obligations, contractual commitments, and accumulated liabilities of the constituent corporations.⁷⁰ The law treats this as a continuation rather than a creation: the surviving entity is the "same" legal person as the predecessor, enlarged by the addition of the acquired company's assets and obligations. But the sociological question is more complex. Studies of post-merger integration routinely find the "culture clash" between merging organizations to be an important cause of merger failure.⁷¹ The two prede-

⁶⁸ *In re Gen. Motors Corp.*, 407 B.R. 463, 473, 480–81 (Bankr. S.D.N.Y. 2009) (Gerber, J.) (approving the sale of substantially all of the debtor's operating assets under 11 U.S.C. § 363 to the entity that became the new General Motors).

⁶⁹ The problem is ancient: Plutarch recounts the paradox of the ship of Theseus, whose decaying timbers were gradually replaced, and the ensuing philosophical dispute over whether it remained the same ship. PLUTARCH, *LIFE OF THESEUS* 23.1. Thomas Hobbes added a further twist: if the old planks were reassembled into a second ship, which would be the original? THOMAS HOBBS, *DE CORPORE* ch. 11, § 7.

⁷⁰ See DEL. CODE ANN. tit. 8, § 259(a) (2026) (providing that, upon merger, the constituent corporations' property and rights vest in the surviving corporation and that their debts, liabilities, and duties attach to it).

⁷¹ See, e.g., Roberto A. Weber & Colin F. Camerer, *Cultural Conflict and Merger Failure: An Experimental Approach*, 49 MGMT. SCI. 400, 400–03 (2003); ROBERT F. BRUNER, *DEALS FROM HELL: M&A LESSONS THAT RISE ABOVE THE ASHES* 171–72 (John Wiley & Sons 2005). The question has practical consequences. When Exxon merged with Mobil in 1999, the resulting entity, ExxonMobil, inherited both companies'

cessor organizations have different institutional cultures, different informal norms, different ways of making decisions and resolving disputes. The merger creates a new sociological entity that is continuous with neither predecessor in the way that a natural person is continuous with her earlier self. The legal continuity is maintained by fiat; the sociological continuity may or may not be achieved in practice. This is the corporate equivalent of Parfit's teletransportation case: the legal identity is preserved, but the underlying substrate has been so radically altered that the question of "sameness" becomes genuinely difficult.

The spin-off raises the opposite problem. When a corporation separates a business or subsidiary into an independent company, the resulting company might be an existing subsidiary or a newly formed legal person. But sociologically, it might preserve the culture, the personnel, the institutional memory, and the organizational routines of the predecessor division almost intact. The legal identity is broken; the organizational identity is continuous. This is the corporate equivalent of Parfit's fission case: the person has divided, and each branch preserves enough continuity with the original to make a plausible claim to be "the same" entity.

Bankruptcy provides the most illuminating test. Chapter 11 of the Bankruptcy Code often facilitates reorganization of a business as a going concern, although it also permits liquidating plans. Chapter 7 ordinarily liquidates the debtor's estate. The choice between reorganization and liquidation is, in effect, a judgment about whether the sociological corporation is worth preserving: whether its organizational value, the "going-concern surplus" that arises from the coordination of firm-specific assets, exceeds the value of those assets sold separately. The law thus implicitly recognizes the distinction between the sociological corporation, which has a going-concern value worth preserving and which therefore warrants the extraordinary intervention of Chapter 11, and the legal entity that houses no genuine organizational life, which can be liquidated without loss of anything except the legal shell. The bankruptcy system is, in this respect, a working application of the sociological and legal distinction proposed in this article, even though the courts administering it have never described it in those terms.

None of this applies to the legal corporation that lacks a sociological counterpart. The shell company does not deliberate, does not form emergent beliefs, does not possess a CID structure that converts individual inputs into collective intentions. Its "decisions" are the decisions of a natural person acting through it as a conduit, in the way that a ventriloquist's words are attributed to the dummy: the form of separate agency without the substance. The philosophical case for genuine corporate personhood, as developed by

legal obligations, contractual commitments, and accumulated liabilities. But did it inherit their institutional cultures, their collective knowledge, and their corporate personalities?

List, Pettit, and French, applies to the sociological corporation and to it alone. When the fiction theorists said that the corporation is a mere legal device with no real will of its own, they were describing the shell company accurately. When the real entity theorists said that the corporation is a genuine social organism with emergent agency, they were describing General Motors accurately. Each side universalized a description that was true of only a subset of the cases.

One entity has been conspicuously absent from this analysis. Run the state through the same machinery and it emerges, unsurprisingly, as a sociological corporation of the first rank. It deliberates through legislatures and cabinets, and it forms emergent judgments through aggregation procedures so elaborate that the discursive dilemma was first identified in one of its organs, the multi-judge court. Its institutional memory operates on a scale no firm approaches, and its decision structure runs from constitution to statute to regulation to precedent with a formality no CID structure can match. The state is General Motors, not the Cayman Islands shell company. The government's personality has never seemed strange: the attribution corresponds to a social reality so massive that the correspondence is invisible.

The asymmetry with which this article began thereby receives its final diagnosis. State personhood is uncontroversial because the state is the paradigm case of the sociological corporation. Corporate personhood is controversial because the legal label fails to distinguish entities that resemble the state from entities that resemble a filing.

IV. IMPLICATIONS AND EXTENSIONS

Several consequences follow for questions that are currently live in legal scholarship and in the courts. I will sketch three, each of which deserves more extended treatment than a single article can provide.

The first, and most immediately pressing, concerns corporate constitutional rights. The trajectory of American constitutional doctrine can be told as the story of a series of missed distinctions, in which courts extended, or denied, constitutional protection to "the corporation" without ever considering which kind of corporation they were talking about.

The story begins in 1819 with *Trustees of Dartmouth College v. Woodward*,⁷² in which Chief Justice John Marshall described the corporation as "an artificial being, invisible, intangible, and existing only in contemplation of law."⁷³ This was the fiction theory in its purest American expression. By characterizing the corporation as a creature of its charter, Chief Justice Marshall could treat the charter as a contract and invoke the Contracts Clause to

⁷² 17 U.S. (4 Wheat.) 518 (1819) (Marshall, C.J.).

⁷³ *Id.* at 636.

protect Dartmouth College from the New Hampshire legislature's attempt to convert it into a public institution. But Dartmouth College was a sociological corporation in the fullest sense: an educational institution with a genuine community, a distinctive culture, and an institutional identity with organizational antecedents that predated its 1769 charter.⁷⁴ Chief Justice Marshall's fiction theory was the wrong theoretical framework for the right result. He protected the college not because it was a legal fiction but because it was a real institution that the state had no business appropriating.

The *Santa Clara County v. Southern Pacific Railroad Co.* headnote of 1886 compounded the confusion.⁷⁵ By declaring, without argument or analysis, that the Fourteenth Amendment's Equal Protection Clause applied to corporations, the Supreme Court (or rather, the Reporter of Decisions) extended constitutional protection to every entity bearing the legal label "corporation," without regard to whether the entity possessed any of the attributes that might justify such protection. The Southern Pacific Railroad was a sociological corporation: a vast industrial enterprise with tens of thousands of employees, a complex organizational structure, and a genuine institutional identity. But the Santa Clara principle applies equally to a shell company formed yesterday. This was the original sin of American corporate constitutional law: the failure to ask whether the nature of the entity matters.

*Bellotti*⁷⁶ attempted to sidestep the problem by reframing the issue. The Court held that corporate political speech was protected not because the corporation had a right to speak but because the public had a right to hear.⁷⁷ The focus shifted from the speaker's identity to the listener's interest. This was ingenious but ultimately evasive, because it dissolved the question of corporate personhood into a question about the public's informational environment, leaving unanswered the question of why the corporation, as distinct from the natural persons who compose it, should be the vehicle through which that information reaches the public.

*Citizens United*⁷⁸ collapsed the distinction between speaker and listener entirely, holding that "the First Amendment does not allow political speech restrictions based on a speaker's corporate identity."⁷⁹ Justice Antonin Scalia's concurrence supplied a more explicitly associational rationale, treating corporate speech as the speech of individuals who have joined together in corporate

⁷⁴ See *id.* at 520 (reproducing the 1769 charter's recital that Eleazar Wheelock had established an Indian charity school in 1754).

⁷⁵ See *Santa Clara Cnty. v. S. Pac. R.R. Co.*, 118 U.S. 394, 396 (1886) (recording Chief Justice Morrison Remick Waite's statement before argument that the Supreme Court was unanimously of the view that the Equal Protection Clause applied to corporations); see also *Pembina Consol. Silver Mining Co. v. Pennsylvania*, 125 U.S. 181, 189 (1888) (Field, J.) (confirming the *Santa Clara* dictum).

⁷⁶ *First Nat'l Bank v. Bellotti*, 435 U.S. 765 (1978) (Powell, J.).

⁷⁷ *Id.* at 776–77.

⁷⁸ *Citizens United v. FEC*, 558 U.S. 310 (2010) (Kennedy, J.).

⁷⁹ *Id.* at 347.

form.⁸⁰ But this framing works only for the sociological corporation, where there is a genuine group of people who have associated for a purpose and who generate collective expression through deliberative processes.⁸¹ It does not work for the shell company that has no members, no deliberative processes, and no collective expression. A super political action committee (PAC) created for the sole purpose of channeling donations into political advertising is not an “association of individuals” in any meaningful sense. It is a legal conduit. The *Citizens United* majority’s failure to distinguish between these cases helps explain why a decision nominally about an advocacy nonprofit became a synonym for the political power of business corporations.

*Hobby Lobby*⁸² gestured at something like the sociological and legal distinction, but it drew the line in the wrong place. The majority limited its holding to “closely held” corporations, apparently on the theory that such corporations are more likely to reflect the genuine religious convictions of their owners.⁸³ But “closely held” is a description of ownership structure, not of organizational reality. A closely held family business with 500 employees and a genuine corporate culture is a sociological corporation in which religious convictions might plausibly be embedded in the organization’s collective identity. A closely held investment vehicle with no employees is not. The relevant variable is the presence or absence of genuine group agency and the extent to which the claimed right—in this case, religious exercise—is attributable to the organization as such rather than to the natural persons who control it.

The distinction between the sociological corporation and the legal corporation proposed in this article would not resolve every case, but it would focus the inquiry on the right question: does this entity possess the kind of genuine group agency that makes the attribution of the claimed right intelligible? A sociological corporation that has developed, through collective deliberation over time, a set of institutional values and commitments has a plausible claim to expressive autonomy, because its expression is the product of a genuine collective process. A shell company, a single-purpose vehicle, or a super PAC created primarily as a conduit for political spending has no such

⁸⁰ *Id.* at 392 (Scalia, J., concurring).

⁸¹ The Supreme Court’s own doctrine already treats a group’s expressive interest as the group’s own and not as a tally of what its members severally believe. In *Boy Scouts of Am. v. Dale*, 530 U.S. 640 (2000) (Rehnquist, C.J.), the Court held that compelling the organization to retain an assistant scoutmaster whose presence it understood as contradicting the message it wished to convey would burden its First Amendment right of expressive association. *Id.* at 644. The holding is intelligible only if the association has a viewpoint that is predicable of it as a whole rather than of its members one by one, a viewpoint that members may join without authoring and that survives their disagreement. *Dale* thus supports the idea that the law speaks, when it must, as though the group is the kind of thing that can mean something. The point tells only for the sociological corporation, since the shell company and the conduit super PAC have no message of their own to protect.

⁸² *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014) (Alito, J.).

⁸³ *Id.* at 717.

claim, because there is no collective process, no institutional deliberation, and no organizational identity from which expression could emerge. The distinction will not draw bright lines in every case, but it offers a principled basis for differentiation that current doctrine conspicuously lacks.

The second implication concerns the new frontier of non-human legal personhood. Ecuador's constitution grants nature the right to exist and regenerate.⁸⁴ New Zealand has declared Te Awa Tupua, encompassing the Whanganui River, a legal person.⁸⁵ Bolivia has enacted a Law of the Rights of Mother Earth.⁸⁶ These developments draw on the precedent of corporate personhood, and they are sometimes presented as extensions of the same conceptual trajectory: if the law can treat a corporation as a person, why not a river?

The distinction between sociological and legal personhood clarifies what is at stake. A river is not a group agent. It does not deliberate, form beliefs, or act on reasons. Its "personhood" is a legal fiction in the purest sense: a device for giving standing to human guardians who can enforce environmental protections on the river's behalf. The river-as-legal-person is, conceptually, in the same category as the shell company: a juridical construct with no underlying agency. This does not make the device illegitimate; legal fictions can serve important purposes, and granting standing to guardians of rivers and ecosystems might be a useful innovation in environmental governance. But it does mean that the rights-of-nature movement should not claim the support of the real entity theory or of the philosophical arguments for group agency developed by List, Pettit, and French. The case for rivers-as-persons must rest on other grounds: the intrinsic value of ecosystems, the inadequacy of existing environmental law, the moral claims of indigenous communities whose cosmologies recognize natural entities as persons, or a frankly instrumental judgment that legal personality is a useful device for achieving environmental objectives that other legal tools have failed to secure.

The third implication, and potentially the most consequential, concerns artificial intelligence (AI). As AI systems grow more autonomous, more capable, and more deeply embedded in social and economic life, the question of their legal status becomes increasingly pressing. Lawrence Solum raised the question as early as 1992,⁸⁷ and it has generated a growing literature since then.⁸⁸ The distinction between the sociological corporation and the legal

⁸⁴ CONSTITUCIÓN DE LA REPÚBLICA DEL ECUADOR [CONSTITUTION OF ECUADOR] arts. 71–74, Registro Oficial No. 449 (Oct. 20, 2008).

⁸⁵ Te Awa Tupua (Whanganui River Claims Settlement) Act 2017, § 14 (N.Z.).

⁸⁶ Ley de Derechos de la Madre Tierra [Law of the Rights of Mother Earth], Ley No. 071, arts. 5–7 (Dec. 21, 2010) (Bol.).

⁸⁷ Lawrence B. Solum, *Legal Personhood for Artificial Intelligences*, 70 N.C. L. REV. 1231, 1231 (1992).

⁸⁸ See, e.g., Sital Kalantry, *Legal Personhood of Potential People: AI and Embryos*, CALIF. L. REV. ONLINE (Nov. 24, 2025), <https://www.californialawreview.org/online/ai-personhood>; Peter N. Salib & Simon Goldstein, *AI Rights for Human Safety*, 112 VA. L. REV. 1061 (2026).

corporation provides a framework that avoids the two most common errors in the existing debate: the error of treating AI personhood as obviously absurd and the error of treating it as obviously warranted.

An AI system that satisfies the List-Pettit conditions for agency, possessing representational states, motivational states, and a capacity for integrated rational action, is in the same conceptual position as a sociological corporation. It has a genuine if non-human form of agency that is not reducible to the agency of its programmers or users. Its behavior cannot be usefully predicted from its design or its training, any more than a corporation's decisions can be predicted from its charter. It processes information, forms something that functions like beliefs, pursues something that functions like goals, and responds to reasons in something that functions like a reasons-responsive way. Whether this functional agency is "real" agency in the sense that matters for legal personality is precisely the question that the distinction between the sociological corporation and the legal corporation is designed to address. An AI system that is merely a tool, executing instructions without autonomous judgment, is in the conceptual position of a shell company: a device through which human agency operates, not an agent in its own right.

The danger, which several scholars have identified, is that AI personhood could be used to shield developers from liability, reprising the worst feature of corporate limited liability without the social benefits that limited liability was designed to produce.⁸⁹ If an autonomous vehicle causes a fatal accident and the AI system driving it is treated as a legal person, the question of liability becomes murky in ways that might advantage the developer at the expense of the victim. The European Union's approach instead imposes obligations on the persons and entities that provide and deploy AI systems, without conferring legal personality on the systems themselves, and thus avoids that particular liability-shield problem.⁹⁰ The distinction between genuine agency and mere instrumentality is therefore practically urgent. The distinction between sociological and legal personhood supplies a principled basis for deciding when legal personality recognizes real agency and when it merely creates a useful legal instrument.

⁸⁹ See Joanna J. Bryson, Mihailis E. Diamantis & Thomas D. Grant, *Of, for, and by the People: The Legal Lacuna of Synthetic Persons*, 25 ARTIFICIAL INTELLIGENCE & L. 273, 285–87 (2017).

⁹⁰ On the European Union's approach to AI regulation, see Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 Laying Down Harmonised Rules on Artificial Intelligence and Amending Regulations (EC) No. 300/2008, (EU) No. 167/2013, (EU) No. 168/2013, (EU) No. 2018/858, (EU) No. 2018/1139, and (EU) No. 2019/2144 and Directives 2014/90/EU, (EU) 2016/797, and (EU) 2020/1828 (Artificial Intelligence Act), arts. 2–3, 16, 26, 2024 O.J. (L 1689) 1. The EU's AI Act notably does not grant legal personality to AI systems but instead imposes obligations on the persons and entities that develop, deploy, and use them. The contrast with the American approach to corporate constitutional rights is instructive.

V. THE PLURALIST ALTERNATIVE

The contemporary debate over corporate personhood is often framed as a conflict between critics who emphasize corporate power and defenders who emphasize economic freedom. Neither side has absorbed the insight that animated the pluralist tradition from which the most sophisticated thinking about group personality originally emerged.⁹¹

Recall the shape of Gierke's argument. He did not defend the personality of the trading company in particular. He defended the personality of all genuine human groups: the guild, the commune, the university, the church, the cooperative, the trade union, and the state. His target was the monopoly of personality claimed by the sovereign under the fiction-and-concession theory, which reduced every form of collective life to a creature of state permission. Maitland saw the English implications clearly. In a legal system that required a royal charter or an Act of Parliament for incorporation, vast areas of associational life, including nonconformist congregations, friendly societies, working men's clubs, and trade unions, existed in a juridical limbo: real social organisms with no legal standing, forced to hold property through trustees and to litigate through members rather than in their own names. Figgis, a High Church Anglican clergyman, extended the argument to the defense of religious communities against the encroachments of the secular state.⁹² The young Harold Laski, before his turn toward conventional socialism, argued that sovereignty itself was a pluralistic phenomenon, distributed across multiple centers of authority rather than concentrated in the state.⁹³

The pluralist tradition held that the state is one group person among many, that it has no metaphysical priority over the church or the university or the workers' cooperative, and that any theory making all group life dependent on sovereign concession was both philosophically false and politically dangerous. The 20th century vindicated this last proposition at enormous cost. But the vindication has been largely forgotten in the contemporary debate, which treats corporate personhood as a contest between the state and the market, as though those were the only two contestants.

There is a parallel tradition in Catholic social teaching that arrives at a similar conclusion by a different route. Leo XIII's *Rerum Novarum* in 1891 defended the right of workers to form associations and insisted that the state

⁹¹ For the best modern intellectual history of the pluralist movement, see DAVID RUNCIMAN, *PLURALISM AND THE PERSONALITY OF THE STATE* (Cambridge Univ. Press 1997).

⁹² Maitland, *Introduction*, *supra* note 15, at vii, xxvii–xxxii; FIGGIS, *CHURCHES IN THE MODERN STATE*, *supra* note 27, at 39–44, 59–63; *see also* RUNCIMAN, *PLURALISM AND THE PERSONALITY OF THE STATE*, *supra* note 91, at 89–149.

⁹³ HAROLD J. LASKI, *The Pluralistic State*, in *THE FOUNDATIONS OF SOVEREIGNTY AND OTHER ESSAYS* 232, 232–50 (Harcourt, Brace & Co. 1921); *see also* RUNCIMAN, *PLURALISM AND THE PERSONALITY OF THE STATE*, *supra* note 91, at 177–94.

“should watch over these societies of citizens banded together in accordance with their rights, but it should not thrust itself into their peculiar concerns and their organization.”⁹⁴ Pius XI’s *Quadragesimo Anno* in 1931 articulated the principle of subsidiarity in its canonical form: it is an injustice and a disturbance of right order to assign to a greater and higher association what lesser and subordinate organizations can do for themselves.⁹⁵ John Paul II extended the principle to the modern context in *Centesimus Annus* in 1991, emphasizing the importance of intermediate institutions between the individual and the state.⁹⁶

The principle of subsidiarity is not identical to Gierke’s real entity theory, but the two are deeply congruent.⁹⁷ Both hold that group life is a natural and irreducible feature of human social existence, not a creation of the state. Both insist that intermediate associations, those that stand between the individual and the sovereign, possess a genuine authority of their own that the state is bound to respect. And both recognize that the destruction of intermediate associations, whether by a totalitarian state or by a market order that reduces all relationships to bilateral contracts, impoverishes human life by eliminating the institutional context within which solidarity, mutual obligation, and collective self-governance are possible.

Jacob Levy in 2015 framed the history of liberal thought as an ongoing tension between two commitments: the rationalist’s distrust of intermediate groups as “sites of local tyranny” (guilds that restrict entry, churches that coerce belief, communities that enforce conformity) and the pluralist’s defense of intermediate groups as bulwarks against central tyranny (associations that check state power, communities that sustain identities the state cannot provide, institutions that preserve knowledge and practices the

⁹⁴ Leo XIII, *Rerum Novarum* ¶ 55 (1891) (“The State should watch over these societies of citizens banded together in accordance with their rights, but it should not thrust itself into their peculiar concerns and their organization, for things move and live by the spirit inspiring them, and may be killed by the rough grasp of a hand from without.”).

⁹⁵ Pius XI, *Quadragesimo Anno* ¶¶ 79–80 (1931). The encyclical formally articulated the principle of subsidiarity: “Just as it is gravely wrong to take from individuals what they can accomplish by their own initiative and industry and give it to the community, so also it is an injustice and at the same time a grave evil and disturbance of right order to assign to a greater and higher association what lesser and subordinate organizations can do.”

⁹⁶ John Paul II, *Centesimus Annus* ¶¶ 48–49 (1991) (extending the subsidiarity principle to the modern welfare state and emphasizing the importance of intermediate institutions).

⁹⁷ The convergence is not confined to Catholic social thought. The Calvinist tradition arrived at a structurally similar position. Johannes Althusius built his *Politica* in 1603 on the premise that the commonwealth is a federation of prior associations, each with an integrity of its own. JOHANNES ALTHUSIUS, *POLITICA* 17–28, 45–48 (Frederick S. Carney trans. & ed., Liberty Fund 1995) (1603). Abraham Kuyper’s doctrine of “sphere sovereignty,” announced in his 1880 inaugural address at the Free University of Amsterdam, holds that each sphere of social life derives its authority directly rather than by delegation from the state. ABRAHAM KUYPER, *Sphere Sovereignty*, in ABRAHAM KUYPER: A CENTENNIAL READER 461, 466–68 (James D. Bratt ed., Eerdmans 1998). Gierke himself recovered Althusius for modern scholarship in OTTO VON GIERKE, *JOHANNES ALTHUSIUS UND DIE ENTWICKLUNG DER NATURRECHTLICHEN STAATSTHEORIEN: ZUGLEICH EIN BEITRAG ZUR GESCHICHTE DER RECHTSSYSTEMATIK* (Verlag von Wilhelm Koebner 1880).

market would destroy).⁹⁸ Alexis de Tocqueville understood the tension better than anyone. He saw that voluntary associations were the essential counterweight to the “soft despotism” of democratic centralization, even as he recognized that those same associations could be parochial, exclusive, and oppressive.⁹⁹

The contemporary debate over corporate personhood has lost sight of this tension entirely. The left treats the corporation as an enemy of the public good and wants the state to control it. The right treats the corporation as a vehicle for individual liberty and wants the state to leave it alone. Neither side recognizes that the corporation is only one species of group person, and that the theory of corporate personality must also account for the church, the university, the trade union, the mutual aid society, and the civic association. A theory that strips the corporation of its personality will have consequences for every other group person as well, because the arguments that dissolve the corporation’s claim to genuine group agency dissolve those of the church and the union equally. And a theory that inflates the corporation’s personality into a vehicle for unlimited political spending will debase the concept of group agency for every other association, by reducing it to a tool for the exercise of economic power.

The pluralist alternative holds that the real enemy is any monopoly of personality, whether claimed by the state or by capital. The state that insists on a monopoly of legitimate group life, which is the concession theory taken to its extreme, and the market order that dissolves all group life into bilateral contracts, which is the nexus-of-contracts theory taken to its extreme, are mirror-image pathologies. Both destroy the intermediate associations on which a decent social order depends. The distinction between sociological and legal personhood proposed in this article is, in the end, a tool for preserving what the pluralists valued: the recognition that genuine group life is a social fact that the law should respect, combined with a clear-eyed acknowledgment that not every legal construct that bears the label “corporation” embodies genuine group life. The fiction theory is correct about the shell company. The real entity theory is correct about the church, the university, and the operating business enterprise. A legal order that cannot tell the difference between them has lost its grip on the social world it is meant to govern.

⁹⁸ JACOB T. LEVY, *RATIONALISM, PLURALISM, AND FREEDOM* 1–3 (Oxford Univ. Press 2015).

⁹⁹ 2 ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 489–500, 661–65 (Harvey C. Mansfield & Delba Winthrop trans., Univ. of Chicago Press 2000) (1835–40) (analyzing the role of voluntary associations in counterbalancing democratic despotism).

CONCLUSION

State personhood and corporate personhood are instances of the same phenomenon, born of the same intellectual tradition and susceptible to the same philosophical analysis, and the selective anxiety directed at the latter but not the former reflects a confusion between the technical attribution of legal personality and the substantive attribution of moral standing. The traditional debate between the fiction theory and the real entity theory cannot be resolved as formulated, because it rests on the false assumption that “corporation” refers to a single kind of entity. The sociological corporation, possessing genuine collective agency, is accurately described by the real entity theory. The legal corporation, possessing no social existence of its own, is accurately described by the fiction theory. The two theories are not rivals, but answers to different questions. The natural person, far from being the secure paradigm against which corporate personhood is measured, is itself an internally composite entity whose unified agency is constructed through mechanisms that closely parallel those of the sociological corporation, and the philosophical case for genuine group agency, as developed by List, Pettit, and French, is sound. The debate over corporate personhood cannot be conducted in isolation from the broader question of group personality. The corporation is one species of group person among many, and a theory of corporate personality that does not also account for the church, the university, the trade union, and the civic association is radically incomplete.

The question is not whether corporations “are” persons, as though personhood were a natural kind with a fixed set of necessary and sufficient conditions that an entity either satisfies or does not. The question is what kind of person a given corporation is, and what rights, duties, and responsibilities follow from that determination. A sociological corporation with genuine collective agency, emergent beliefs, and a functioning internal decision structure has a claim to moral standing that a shell company does not. The former is a group agent in the full philosophical sense. The latter is a set of documents in a filing cabinet. Any theory of corporate personality that treats them identically will be unable to account for the intuitions that drive the debate or to offer useful guidance to the courts and legislatures that must decide, case by case, which attributes of personhood to extend and which to withhold.

Personhood, in law and in fact, is constructed and composite, sustained by institutional mechanisms rather than by metaphysical necessity. This is as true of natural persons as of artificial ones. The self is an achievement, not a given. The state is an artifact, not a natural kind. And the corporation, at its best, is a genuine social organism whose collective agency is no less real for being emergent, and no less deserving of recognition for being sustained by

human beings rather than by neurons. The persons we make are not less real for being made. What matters is what we have made them for, and whether the making has been done well.